

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

CITIZENS AGAINST CASINO GAMBLING IN
ERIE COUNTY, et al.,

Plaintiffs,

v.

DECISION AND ORDER

DIRK KEMPTHORNE,¹ et al.,

06-CV-0001S

Defendant.

1. Currently pending before this Court is Defendants' Motion to Stay briefing and argument on Plaintiffs' Motion for Summary Judgment pending resolution of Defendants' earlier filed Motion to Dismiss. Defendants urge that a stay will "avoid a potential waste of judicial resources and . . . avoid adjudication of matters with regard to which the United States has not waived its sovereign immunity." In short, Defendants argue that this Court must address its jurisdictional arguments before considering the merits of the case.

2. This Court has no quarrel with Defendants' recitation of the law and does not intend to "offend[] [the] fundamental principles of separation of powers" by deciding the merits of this action prior to determining whether jurisdiction exists. Steel Co. v. Citizens for a Better Env't, 523 U.S. 83, 94, 118 S. Ct. 1003, 140 L. Ed. 2d 210 (1998).

3. However, this Court is not convinced that it would be a waste of judicial resources to have Plaintiffs' Motion for Summary Judgment fully briefed, argued and "waiting in the wings" in the event it is determined that jurisdiction does exist over some or

¹ Pursuant to Rule 25(d)(1) of the Federal Rules of Civil Procedure, Dirk Kempthorne should be substituted for Gale A. Norton as Secretary, United States Department of Interior.

all of the claims advanced. Moreover, in the event that some or all of the claims proceed, this approach will facilitate a more expeditious consideration of the merits.

4. Accordingly, Defendants' Motion to Stay (Docket No. 49) is DENIED.

SO ORDERED.

Dated: August 31, 2006
Buffalo, New York

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/s/William M. Skretny
WILLIAM M. SKRETNY
United States District Judge